

SENATE BILL REPORT

SB 6361

As Reported by Senate Committee On:
State Government, Tribal Relations & Elections, January 29, 2020

Title: An act relating to the administration of election campaign activities and reporting statements of financial affairs.

Brief Description: Concerning the administration of election campaign activities and reporting statements of financial affairs.

Sponsors: Senators Kuderer, Hunt and Wilson, C.; by request of Public Disclosure Commission.

Brief History:

Committee Activity: State Government, Tribal Relations & Elections: 1/17/20, 1/29/20 [DPS-WM].

Brief Summary of First Substitute Bill

- Allows the PDC to modify codes used to report asset and debt values on the F-1 statement by rule.
- Prohibits the PDC from publishing F-1 statements of legislative staff or the residential address of any filer online.
- Requires disclaimers on advertising citing endorsements for different races other than the one to which the advertising pertains.
- Turns the public disclosure transparency account into a non-appropriated account.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 6361 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Zeiger, Ranking Member; Muzzall, Assistant Ranking Member; Hasegawa, Hawkins and Takko.

Staff: Samuel Brown (786-7470)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: The Public Disclosure Commission. The PDC was created by the passage of Initiative 276 in 1972. The PDC is empowered to provide timely public access to information about the financing of state and local political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to ensure compliance with contribution limits and other campaign finance restrictions.

The PDC is composed of five commissioners, appointed for single five-year terms by the Governor and subject to Senate confirmation. No more than three commissioners may be members of the same political party. During their terms, commissioners are prohibited from:

- holding or campaigning for office;
- serving as political party or committee officers;
- soliciting or making campaign contributions;
- participating in election campaigns; or
- lobbying, except on matters directly related to campaign finance law.

Personal Financial Affairs Reporting. Every elected official and executive state officer must file a statement of financial affairs, also known as an F-1 statement, for the preceding calendar year with the PDC. The F-1 statement requires disclosure of financial and personal information relating to the filer and the filer's immediate family. Required items for disclosure include the following:

- the filer and filer's immediate family members' occupation, name of employer, and business address;
- compensation for preparing, promoting, or opposing legislation or agency rules, rates, or standards;
- real property holdings;
- bank accounts, insurance policies, stocks, mutual funds, and other intangible personal property holdings;
- any ownership interests of 10 percent or greater in private entities, and, if applicable, compensation;
- any gifts of food or beverage in excess of \$50; and
- any other information deemed necessary by the PDC.

The PDC may grant a reporting modification and waive completion of any part of the F-1 reporting requirement where the requirement imposes extreme hardship on the filer and the modification would not frustrate the PDC's purposes of increased disclosure and access for up to three years, or up to an elected official's term of office.

Public Disclosure Transparency Account. Awards from campaign finance enforcement actions conducted on behalf of the state are deposited in the Public Disclosure Transparency Account, in the custody of the State Treasurer. Money in the account is subject to appropriation and must be used for implementation and administration of campaign finance and disclosure laws.

Ballot Propositions. Persons or committees supporting or opposing ballot propositions must report information on contributions and expenditures above certain amounts to the PDC. In *State v. Evergreen Freedom Foundation*, 192 Wn. 2d 782 (2019), the state Supreme Court held that local ballot measures are considered "propositions," subjecting supporters and opponents to disclosure requirements, prior to signature gathering, if the measure's language

and signatures needed to submit the measure to the local governing body are subsequently filed with an elections official.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): Personal Financial Affairs Reporting. The dollar code ranges used to identify monetary amounts reported on the F-1 statement are removed. The PDC may, by rule, adopt value codes for reporting monetary amounts within certain ranges. The threshold values triggering the requirement to disclose on the F-1 bank accounts, investment assets, compensation, real property, and real property held by and government contracts to a filer's business are raised.

The address of any filer's personal residence must be redacted from any F-1 statement posted online, but is still subject to disclosure upon request. F-1 statements of legislative staff are subject to disclosure upon request, but may not be posted by the PDC on any website.

Political Advertising. Any political advertising that includes an endorsement must include a disclaimer if the endorsement was made in support of the candidate for a different office or a different election than the subject of the advertising. Political advertising endorsing a person who has not filed a declaration of candidacy or write-in candidacy after the candidate filing period must include a disclaimer that votes will not be counted for the person unless the person files a declaration of write-in candidacy.

Endorsement disclaimers must appear immediately next to the endorsement and in at least 10-point type, or at least 10 percent of the largest type used, whichever is larger. For televised advertisements or advertisements with visual images, the disclaimer must be clearly spoken before or after the endorsement is displayed or spoken, or appear in print and be visible for at least four seconds immediately before, after, or during the endorsement. For advertisements with no visual image, the disclaimer must be clearly spoken immediately before or after the endorsement is spoken.

Public Disclosure Transparency Account. The Public Disclosure Transparency Account is converted into a non-appropriated account. Only the PDC may authorize expenditures. Money in the account may only be used for projects to improve usability, transparency, and accessibility of PDC reporting systems.

Ballot Propositions. A ballot measure is considered a proposition at the time it is initially filed with an elections official or circulated for signatures, whichever occurs first.

Other Provisions. The PDC must conduct a statistically sufficient number of audits and field investigations as staff capacity permits.

EFFECT OF CHANGES MADE BY STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS COMMITTEE (First Substitute): Public Disclosure Commission Commissioner Activities. Provisions allowing commissioners to participate in campaigns outside the PDC's jurisdiction, without contributing to, soliciting contributions to, or allowing the commissioner's name to be used to support a candidate otherwise subject to PDC jurisdiction are removed.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: It has been difficult to find people to volunteer to serve as PDC commissioners, and allowing some political activity is designed to broaden the appeal of becoming a commissioner. Other changes give the PDC more flexibility in determining the F-1 content by removing a strict code structure, protect the safety of F-1 filers, and enable the PDC to modernize its digital operations. Current law is unconstitutional with regard to commissioners' rights to participate in elections outside of Washington. Other states defer to their campaign regulatory agencies on restricting their own members' political activities. There should be a disclaimer, not a prohibition on what is said in political advertising—this is akin to top five donor disclosure.

CON: PDC commissioners are supposed to be impartial adjudicators of campaign finance law. The changes to commissioner activity would allow a PDC commissioner to endorse a candidate, then adjudicate a claim regarding a supporter of a rival candidate. Restrictions on political advertising in the bill are problematic because political speech is the most protected form of speech and the language could be challenged.

OTHER: If we are going to revisit the structure that PDC commissioners are experts in campaign finance law, but not engaged in campaign activity, we should go all the way and ensure a proper diversity of perspectives by letting legislative caucuses appoint commissioners.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Fred Jarrett, Russ Lehman, Peter Lavallee, PDC.

CON: Jan Himebaugh, Building Industry Association of Washington.

OTHER: Maxford Nelsen, Freedom Foundation.

Persons Signed In To Testify But Not Testifying: No one.